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**AUG 02 2007**

**OFFICE OF PETITIONS**

In re Application of  
John D. Phillips  
Application No. 10/761,996  
Filed: January 21, 2004  
Attorney Docket No. 25003B

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 5, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, January 31, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 1, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) 1.

The applicant failed to submit the required reply.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.


Further correspondence with respect to this matter should be addressed as follows:

By Mail:                   Mail Stop PETITION  
                              Commissioner for Patents  
                              P. O. Box 1450  
                              Alexandria, VA 22313-1450

By hand:                 U. S. Patent and Trademark Office  
                              Customer Service Window, Mail Stop Petitions  
                              Randolph Building  
                              401 Dulany Street  
                              Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the April Wise at (571) 272-1642.

  
Irvin Dingle  
Petitions Examiner  
Office of Petitions

Attachment: Courtesy Copy of Non-final Rejection dated January 31, 2006

ay

Attachment:  
Courtesy Copy



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,996	01/21/2004	John D. Phillips	25003B	4300
22889	7590	01/31/2006	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/761,996

Applicant(s)

PHILLIPS, JOHN D.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Marked drwg.

### **DETAILED ACTION**

Applicant has amended claims in the paper dated 10/31/05. Pending claims 14-24 are examined below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 14-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. Des. 369,421 to Kiik et al. in view of U.S. Patent No. 6,014,847 to Phillips.**

Regarding claims 14 and 18, Kiik discloses a variably (random) cut shingle (see title) having an overlay sheet and underlay sheet (marked fig. 1), each overlay sheet having a plurality of select tabs and the underlay sheets having a plurality of shadow patches (marked fig. 1). Kiik also discloses the tabs as covering portions of the patches (fig. 2). In addition, Kiik discloses a portion which can be construed as a non shadow portion (marked figure) which, together with the shadow patches and remainder portions cause the shingle to appear as varying. However, Kiik does not disclose the underlay sheet as having granules of dark and light color. Phillips discloses a shingle with an

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underlay sheet having granules of light and dark colors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kiik by using an underlay sheet having differing colors, as disclosed by Phillips in order to aid in the ornamental and random design as intended by Kiik.

Regarding claim 15, Kiik discloses a remainder portion visible under a bottom edge of a tab (marked fig. 2).

Regarding claim 16, Kiik discloses the shingle as having a longitudinal axis and the remainder portion as having a vertical portion perpendicular to the shingle axis (marked fig. 2).

Regarding claim 17, Kiik discloses the longitudinal axis of the remainder portion as being parallel with the longitudinal axis of the shingle (marked fig. 2).

Regarding claim 19, Kiik discloses a shadow patch width as disposed along the longitudinal width of the shingle (marked fig. 2). Kiik also discloses the shadow width (marked fig. 2) as being longer than the tab width (marked fig. 2). Kiik also discloses the patches and tabs alternating along the length in a synchronized manner (fig. 2).

Regarding claim 20, Kiik discloses the two sheets as laminated together (figs. 3-5) and tabs covering partial portions of patches (fig. 2).

Regarding claim 21, Kiik discloses the remainder portion (marked fig. 2) as being established by the varying lengths of the tabs and patches (marked fig. 2).

Regarding claim 22, Kiik discloses the shingle as being random cut, therefore inherent of having varying remainder portions from shingle to shingle.

Regarding claim 23, Kiik discloses the remainder portion as having a vertical portion which is perpendicular to the longitudinal axis.

Regarding claim 24, Kiik discloses the remainder portion as having a longitudinal portion which is parallel to the shingle longitudinal portion (marked fig. 2).

***Response to Arguments***

Applicant's arguments filed 10/31/05 have been fully considered but they are moot under new grounds of rejections.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

1/26/06

Examiner AU 3635

U.S. Patent

Apr. 30, 1996

MARKED DRAWING  
FOR APPLICATION  
10/761996  
Des. 369,421

FIG. 1

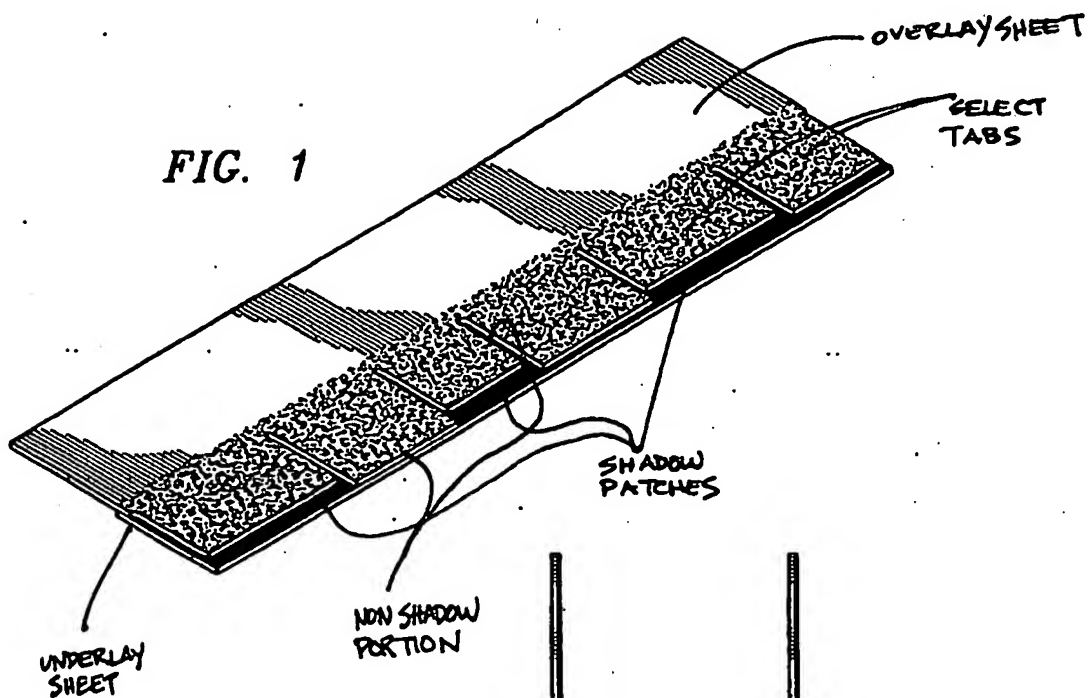


FIG. 4

FIG. 5

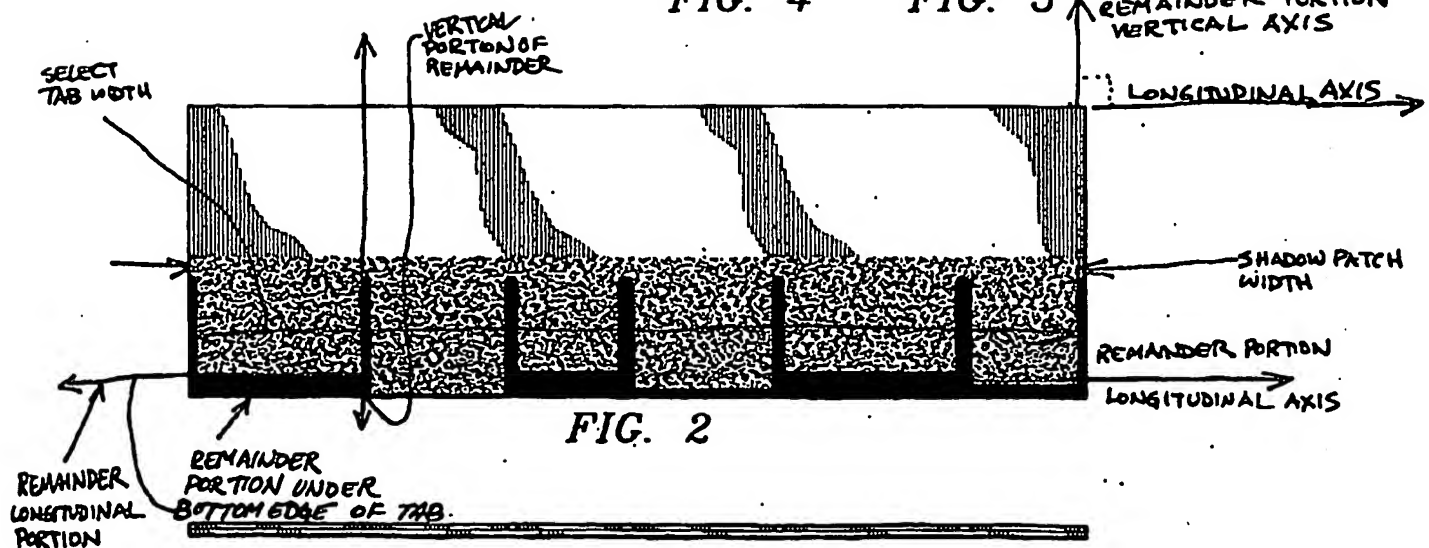


FIG. 2

FIG. 3